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Chair: Mr. Rosenthal ..... (Guatemala)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Ms. McLurg

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The meeting was called to order at 10.05 a.m.

Statement by the President of the General Assembly

1. **Mr. Deiss** (President of the General Assembly) commended the Committee on its work and requested its input to inform the forthcoming deliberations in plenary meeting on the revitalization of the work of the General Assembly. He urged the Committee to consider steps for ensuring the timely completion of its work.

Agenda item 140: Administration of justice at the United Nations (A/65/303, A/65/304, A/65/373 and Corr.1 and A/65/557; A/C.5/65/9)

2. **Mr. Terekhov** (Executive Director, Office of Administration of Justice), introducing the report of the Secretary-General on administration of justice at the United Nations (A/65/373 and Corr.1), said that the new formal system of justice, which was reviewed in chapter II of the report, was generally viewed as a significant improvement over the old system, particularly as it substantially decreased the length of time required to adjudicate a case. A number of issues were highlighted in the report, including a lack of human and financial resources, respondents' difficulties in coping with the increased number of hearings convened by the United Nations Dispute Tribunal and the tight new time limits that must be observed.

3. Chapter III contained responses to questions from the General Assembly, including on delegation of authority for disciplinary measures, the independence of the Management Evaluation Unit, monetary compensation awarded by the Dispute and Appeals Tribunals, the status and entitlements of Appeals Tribunal judges and recourse mechanisms for non-staff personnel.

4. In chapter IV, the Secretary-General drew the Assembly's attention to issues that might have financial implications or affect the interests of the Organization: the desire for continuity in the application of jurisprudence of the former United Nations Administrative Tribunal; the scope of the Secretary-General's discretion; harmonization of proceedings before the Dispute Tribunal; and issues regarding the interpretation of the statutes and rules of procedure of the Dispute and Appeals Tribunals.

5. In chapters V and VI, the Secretary-General made recommendations regarding the strengthening of the formal justice system and action to be taken by the General Assembly.

6. **Mr. Barkat** (United Nations Ombudsman), introducing the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/65/303), said that the establishment of the Ombudsman function as an informal dispute resolution mechanism at the United Nations was leading to a shift in the Organization's approach to internal conflict. Steps to strengthen that approach would reduce the cost of workplace tensions and strengthen the Organization's human capital by enabling staff to work in an environment of fairness and dignity.

7. In 2009, the Office's regional branches had become fully staffed and operational; demand for their services had exceeded expectations. As at 9 November 2010, the Office had received over 1,000 cases in the Secretariat alone, with a projected total of 1,200 by the end of the year, representing an increase of nearly 70 per cent compared to 2009. The complexity of cases was also increasing. Staff and the Administration had clearly demonstrated a willingness to resolve issues through the informal dispute resolution mechanism.

8. Another core function of the Office was to identify and analyse systemic issues and to make recommendations on ways of addressing them. The recommendations in the report had been finalized in conjunction with various departments, including the Office of Human Resources Management, to expedite the organizational response to the issues identified. He welcomed the Assembly's request in its resolution 64/233 for regular reporting on actions taken to address the Ombudsman's findings.

9. The Office played an important role in providing in-person intervention in cases at field offices and operations away from Headquarters. Seventy-four per cent of all requests for its services came from staff in non-Headquarters locations, including the deep field, which was characterized by harsh working conditions and where the Office's interventions had made a difference. Workplace conflicts often festered and then suddenly erupted: he was seeking better ways of preventing and responding to such occurrences. Regrettably, the Office's ability to meet critical requests for in-person intervention in the field had been hampered by a lack of resources. He therefore proposed the use of critical response teams, whose

physical presence on the ground would encourage employees and management to resolve issues through mediation rather than litigation.

10. On the question of coverage, he said that the Office currently served 60,000 staff members worldwide. An expansion to cover non-staff personnel would add 40,000 individuals to that number and would require additional resources.

11. Unlike the formal system of administration of justice, which only handled cases arising from administrative decisions, there was no limit to the types of issues that an ombudsman or mediator could address. Those issues could be tackled early and the root causes of conflict could be identified and addressed before they escalated. The indirect costs of conflict, which were often overlooked, were absenteeism, presenteeism (which meant coming to work but not working), sick leave, high turnover, and low morale and productivity. The report proposed incentives that would strengthen the informal system by focusing on three areas: enhancing cooperation by managers and colleagues to resolve situations informally; creating an organizational culture that addressed conflict more effectively; and improving access to services by deploying rapid response teams. The first two proposals would entail no financial cost to the Organization. At a time when the United Nations faced challenging missions throughout the world, it must be able to focus on those challenges without the distraction of workplace issues.

12. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/65/557), said that it would take more time before the full impact of the establishment of the new system of administration of justice on the culture and practice of the Organization became apparent. Similarly, while there had been an initial increase in the workload compared with the previous system, it was too early to determine what the ongoing workload and output of the Tribunals and other offices would be. Greater awareness among the staff might increase their use of the system, but other factors, including a more established body of precedents, might reduce the number of cases or facilitate their disposition. The Advisory Committee's recommendations on resource requests reflected that view.

13. With respect to the proposal for a second full-time judge at each of the Dispute Tribunal's locations, the Advisory Committee noted that the three ad litem judges were approved up to 30 June 2011 and were funded through the Secretary-General's limited budgetary discretion. In addition, 20 of the 27 posts being requested under the regular budget reflected the regularization of temporary positions funded through the same mechanism; the other 7 posts had been requested for the Office of Staff Legal Assistance. In the light of those considerations, and given that the request was being made in the middle of the budgetary cycle, the Advisory Committee did not recommend approval of the proposal for additional full-time judges or the 27 posts under the programme budget. Instead, the temporary arrangements could be continued while further experience was gathered on the functioning of the new system.

14. With respect to the Office of Staff Legal Assistance, the Advisory Committee had taken into account the fact that proposals for a staff-funded legal assistance scheme had not yet been made. Furthermore, the Assembly would be considering the mandate and functioning of the Office at the current session; the Assembly's decisions should be taken into account in determining what resources should be approved for the Office.

15. While the Advisory Committee did not support the establishment of the two posts requested for the Office of Staff Legal Assistance under the support account for peacekeeping operations, it did recommend the establishment of one temporary P-3 position, given the number of cases being received from peacekeeping operations. The position should be based in Nairobi, where one of the United Nations Dispute Tribunal's Registries was located.

16. On non-post resources, the largest component proposed was $3.7 million for translation and interpretation services for the Tribunals. The estimates for those services did not sufficiently reflect actual requirements to date, which did not fully justify the level of resources being requested. The Advisory Committee therefore recommended that the Secretary-General should explore the most cost-effective means of meeting the Tribunals' needs for the remainder of the biennium and that $1 million should be approved for interpretation and translation services for the Tribunals.

17. Given the importance of an effectively functioning informal system to the overall system of administration of justice, the Advisory Committee supported efforts to raise awareness throughout the Organization of the capacity and benefits of the Office of the United Nations Ombudsman and Mediation Services. There was merit in a number of the proposals to provide incentives for staff to use the Office to resolve disputes. The Administration should consider those recommendations, many of which could be readily implemented and required neither policy changes nor additional resources.

18. **The Chair** drew the Committee's attention to the report of the Internal Justice Council on the administration of justice at the United Nations (A/65/304) and to a letter dated 27 October 2010 from the President of the General Assembly to the Chair of the Fifth Committee (A/C.5/65/9).

19. **Ms. Analena** (Vice-President of the Staff-Management Coordination Committee) said that she would present the views of the staff unions and associations participating in the Staff-Management Coordination Committee. That included Secretariat staff, except those in New York, whose staff union had elected to remain outside the Coordination Committee since 2003. Staff welcomed the new system of justice, which was for the most part independent, transparent, fair and more efficient than the old system. Nevertheless, much remained to be done to enhance the new system. She was dismayed that the Secretary-General's report on the administration of justice at the United Nations (A/65/373 and Corr.1) did not reflect the views of the staff, despite an agreement that those views would be included. The mention of a dedicated session of the Staff-Management Coordination Committee (A/65/373, para. 244) seemed to refer to a special session held in 2007, well before the new system of justice had been established.

20. With respect to the Secretary-General's request to the Assembly to direct the Tribunals to exercise their judicial review with full respect for the prerogatives of the Assembly and the role of the Secretary-General, she noted that the new system had been established to provide an independent review of the Secretary-General's decisions on behalf of the General Assembly. The report of the Redesign Panel (A/61/205 and Corr.1) had pointed out problems in the old system relating to the Secretary-General's power to choose between specific performance and the payment of limited compensation and the inconsistency of the Administrative Tribunal's jurisprudence on the duties of an international organization to its staff. The Secretary-General's proposals in chapter IV of his report would mean a return to that slow, inadequate system and the jurisprudence of the discredited Administrative Tribunal. The Assembly should consider whether the proposals would improve a justice system that was welcomed and trusted by staff or undermine fairness and accountability.

21. The staff supported the request for additional resources for the Office of Staff Legal Assistance. The egregious inequality of arms between management and staff that the Redesign Panel had observed in the old system had not been resolved in the new system. The Office of Staff Legal Assistance had no money for necessities such as pens, paper and office supplies. Surely the General Assembly had not intended to provide such inadequate funding for the only office in the new system dedicated to serving the needs of staff. Most of the staff unions were unable to provide funding for temporary posts in the Office, although members volunteered as counsellors in an attempt to bridge the gap. By forcing the Office to rely on volunteers and inadequate funding, the Organization was returning the system of staff legal assistance to the old, discredited model. United Nations staff were determined to follow the rules, work to their utmost capacity and carry out the Organization's mission; they looked to the Assembly to ensure that the new system of justice remained a robust tool in the service of the rule of law.

22. **Mr. Al-Shahari** (Yemen), speaking on behalf of the Group of 77 and China, said that he welcomed the progress made by the new system of administration of justice in disposing of the backlog of cases and addressing new ones. It was unfortunate that a cost-sharing arrangement with the funds and programmes had not yet been finalized; he trusted that an agreement would soon be reached. The Group was also concerned that no provision had been made for the construction of permanent courtroom space at the three Dispute Tribunal locations, as that might impede the disposition of cases.

23. For too long, United Nations staff had suffered the consequences of a poorly equipped professional legal assistance unit. It was regrettable that the Secretary-General had failed to make proposals to address that issue.

24. The Office of Administration of Justice should be headed by an official at the Assistant Secretary-General level at minimum. An enhanced oversight function was required to ensure the effective — and cost-effective — implementation of the new system. The system should also have an accountability mechanism to guarantee that it produced adequate jurisprudence that took into account the specificities of the United Nations system. An independent, effective and transparent system was imperative to ensure due process for and fair treatment of staff and to hold managers accountable for their actions.

25. **Mr. De Wolf** (Belgium), speaking on behalf of the European Union; the candidate countries Croatia, Iceland and the former Yugoslav Republic of Macedonia; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, the Republic of Moldova and Ukraine, said that the new system of administration of justice, comprising formal and informal components and conceived as being independent, transparent, professional, adequately resourced and decentralized, provided substantially better recourse to justice for staff members. The new system, although still in the initial phase of implementation, had already begun to prove itself with the speedy disposition of cases and would continue to improve as all involved became more familiar with it.

26. The system's success would depend on its independence and efficiency. It was therefore important to ensure that the system received adequate resources, balancing the needs of the Organization with the harsh imperatives of the current fiscal climate. He concurred with the Advisory Committee that more experience was needed before the demands that would be placed on the system, and thus the infrastructure required to support it, could be ascertained. As the Advisory Committee had noted, the Secretary-General's requests for additional resources represented a 60 per cent increase over current costs.

27. With respect to recourse mechanisms for non-staff personnel, the European Union reiterated that the United Nations had a duty to ensure that effective remedies were available to all categories of staff. Nevertheless, more information was needed in order to determine what types of recourse would be most appropriate. He concurred with the members of the Sixth Committee that it was premature for the Assembly to express a view on the issues outlined in chapter IV of the Secretary-General's report (A/65/373). It was important not to infringe upon the independence of the Appeals Tribunal, which heard appeals against judgements of the Dispute Tribunal.

28. **Mr. Ballantyne** (New Zealand), speaking also on behalf of Australia and Canada, said that a properly functioning internal justice system was essential to the effort to strengthen the Organization's accountability, oversight and human resources management. He welcomed the progress made in managing the transition from the previous system. It was timely to examine the lessons learned in the previous year and to consider the adjustments required in order to ensure the smooth operation of the new system. However, many of the proposals on additional posts and other resources were linked to the caseloads of the Dispute and Appeals Tribunals, which had not yet stabilized; any significant changes to the system must be based on a careful analysis of trends over time.

29. **Mr. Gürber** (Switzerland), speaking also on behalf of Liechtenstein, said that the progress made by the new system of administration of justice in its first full year of operation was commendable. All individuals working for the United Nations, regardless of their contractual relationship with it, should have access to an independent body handling grievances and providing appropriate remedies. The two delegations supported the conclusion of the Sixth Committee that none of the options regarding remedies available to the different categories of non-staff personnel described by the General Assembly in paragraph 9 of its resolution 64/233 should be discounted at the current stage, and that the Assembly should revert to the matter at its sixty-sixth session, with the aim of finding a suitable and cost-effective solution.

30. The two delegations were encouraged to note that the emerging jurisprudence of the new Tribunals differed in some respects from that of their predecessors, recalling that the important principle of separation of powers dictated that the Secretary-General must henceforth be a party in the proceedings rather than being in any way above or outside those proceedings. However, as the Charter and relevant resolutions specified, that jurisprudence should not extend beyond the legal foundations of the Organization.

31. The staffing of parts of the Secretariat might have to be strengthened to meet the demands of the new system of administration of justice. A significantly

professionalized structure implied higher costs to the Organization, and a system hampered by backlogs and bottlenecks would fall short of the expectations of staff and Member States, and might compromise due process. At the same time, it might be premature to add permanent capacity to a system that was not yet operating at a normal pace and in which workflows and processes were still evolving. Perhaps the General Assembly should instead focus on establishing clear policy guidance in areas giving rise to the largest number of cases, including some of the human resources management issues currently before the Committee.

32. **Mr. Melrose** (United States of America) said that the staff and judges in the new system of administration of justice deserved recognition for having substantially improved the system's professionalism, transparency and efficiency. As the operations of the United Nations Dispute Tribunal and United Nations Appeals Tribunal were in a period of transition, with procedures and practices still evolving, it was premature to make a definitive assessment of the new system or to make significant changes to it.

33. Recalling that the General Assembly, in its resolution 63/253, had requested proposals for a staff-funded scheme to provide legal assistance and support, his delegation regretted that the Secretary-General had included no follow-up in his report, and urged him to analyse any such schemes that existed elsewhere. It commended the Office of Staff Legal Assistance for its initiative in establishing the Trust Fund for Staff Legal Assistance, and the Staff Coordinating Council of the United Nations Office at Geneva for its contribution of 50,000 Swiss francs to that Fund. It urged other staff unions to follow suit.

34. **Mr. Patel** (India) said that the new system of administration of justice was a marked improvement over its predecessor, and some of its benefits were already visible, thanks to the efforts of its staff and judges. Chief among the benefits was the speedier processing of cases, an essential component of ensuring that justice was done.

35. His delegation supported the use of the services of mediators and ombudsmen as the first recourse under the new system. Those mechanisms should be strengthened in order to improve accountability and human resources management by promoting mutual trust, harmony and understanding between staff and management. The system would ultimately be judged by whether or not staff were confident that their grievances would be addressed professionally, fairly and in a timely manner. The new system should remain consistent with the aims of overall human resources management reform in the United Nations system.

36. His delegation shared the Advisory Committee's disappointment at the delay in finalizing cost-sharing agreements with the funds and programmes and recalled the General Assembly's decision, in paragraph 62 of its resolution 62/228, that the related arrangements should be based on staff numbers rather than the number of cases processed. It urged the Secretary-General to expedite the conclusion of a cost-sharing arrangement.

37. While concurring generally with the Advisory Committee's view that it was too early to decide on a future course of action, his delegation was open to considering specific resource requests on a case-by-case basis, and supported the strengthening of the Office of Staff Legal Assistance as being crucial to the system's efficiency. It had noted the requests for funds for translation and interpretation, and the suggestion that travel entitlements of the Appeals Tribunal judges should be based on those of the judges of the former Administrative Tribunal.

38. **Mr. Al-Hajiri** (Qatar) said that, in order to ensure the effective administration of justice, the United Nations must establish a legal, administrative and financial system that ensured the rights of staff and respected human rights principles and the rule of law. Given that the goal was an independent, professional, responsive, transparent and decentralized system of administration of justice, the Organization should place more emphasis on the informal settlement of disputes.

39. The United Nations should serve as a model for other employers with regard to the administration of justice. It should therefore continue to provide legal services and assistance to its staff because they could not resort to national courts to resolve work-related grievances. Staff members should be encouraged to make use of informal dispute resolution mechanisms and should receive training in that regard. Mediators engaged in informal dispute resolution should be appointed in accordance with appropriate criteria.

40. Given the need to develop a transparent working environment, he welcomed the efforts of the Office of the United Nations Ombudsman and Mediation Services to reach staff members at field offices and operations away from Headquarters. He also

appreciated the concern that the Office had demonstrated for issues raised by local staff and its efforts to hold meetings with key stakeholders. In that connection, the Organization should provide staff with intensive training in mediation and conflict resolution and should seek to identify staff with expertise and experience in that area.

41. The Organization's responsibility to protect the rights of those who performed services for it should extend to United Nations peacekeepers. Although such personnel were bound by a code of conduct, there was no clear legislation that defined the Organization's responsibility towards them in the event that they were taken hostage, assaulted or killed in the line of duty. It was not acceptable to refer those matters solely to the host country. He therefore called on the competent bodies and committees to study the issue with a view to remedying a significant shortcoming in the administration of justice at the United Nations.

42. **Mr. Park** Chull-joo (Republic of Korea) said that, although his delegation acknowledged the success of the new system of administration of justice, improvements must be made in order for it to operate as efficiently as possible. His delegation agreed with the Advisory Committee that the number of cases being mediated was low, and stressed that every effort should be made to resolve disputes informally in order to avoid unnecessary litigation. His delegation also welcomed the key stakeholder forum that had been launched by the Office of the United Nations Ombudsman and Mediation Services. That forum would play an important role in addressing policy issues that were causing systemic problems.

43. His delegation urged the Secretariat and the relevant funds and programmes to conclude without delay an agreement on cost-sharing arrangements for the system of administration of justice, as called for by the General Assembly in its resolution 62/228. His delegation also looked forward to receiving in the near future the Secretary-General's proposals for a staff-funded scheme in the Organization that would provide legal assistance and support to staff, in accordance with General Assembly resolution 63/253.

44. His delegation supported the Secretary-General's proposal to introduce a mechanism to enable the Dispute Tribunal to address non-meritorious claims more expeditiously, and supported the increased use of videoconferencing facilities.

45. With regard to recourse mechanisms for non-staff personnel, his delegation believed that providing an effective remedy to all those who performed work for the United Nations was essential for ensuring the Organization's credibility and transparency. However, it agreed with the Advisory Committee that the system of administration of justice should continue to apply only to individuals covered by the Staff Regulations and Rules of the United Nations. His delegation looked forward to discussing a dispute resolution mechanism for non-staff personnel on the basis of an analysis of the advantages and disadvantages of the four options set out in the Secretary-General's report (A/65/373).

46. Concerning the emerging jurisprudence of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, his delegation noted that all elements of the new system must operate in accordance with the Charter and the legal and regulatory framework that had been approved by the General Assembly. It therefore expected that the Tribunals would be guided accordingly. His delegation concurred with the Advisory Committee that it was too early to assess the demand that would be placed on the administration of justice system and the resources required to support it. The Secretary-General was to be commended for using his limited budgetary discretion in order to arrange temporary support for the new system.

Agenda item 127: Financial reports (*continued*) (A/C.5/65/L.6)

Draft resolution A/C.5/65/L.6: Financial reports and audited financial statements, and reports of the Board of Auditors

47. *Draft resolution A/C.5/65/L.6 was adopted.*

48. **Mr. Nombembe** (Chairperson of the United Nations Board of Auditors) said that the Board of Auditors always sought to ensure that its reports conformed to the rigorous standards that applied to the auditing profession. The Board was therefore proud that the Committee had consistently adopted and endorsed all of its reports and recommendations. It was also particularly pleased to note that draft resolution A/C.5/65/L.6 incorporated the Advisory Committee's recommendation that the Board should report to the General Assembly annually on progress towards the implementation of the International Public Sector Accounting Standards (IPSAS).

49. In its reports to the General Assembly at the current session, the Board sounded a note of caution to all United Nations organizations regarding the sustainability of current audit opinions under the much stricter IPSAS framework. In that connection, while organizations that had received unqualified audit opinions were to be commended, they should take note of the more stringent accounting and auditing requirements of IPSAS. Those that had received modified audit opinions should address all significant issues in order to avoid further escalation, while at the same time taking action to ensure that new financial statement issues did not arise.

Agenda item 132: Pattern of conferences (*continued*) (A/C.5/65/L.7)

Draft resolution A/C.5/65/L.7: Pattern of conferences

50. *Draft resolution A/C.5/65/L.7 was adopted.*

The meeting rose at 11.50 a.m.